

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MYRAIDA MELÉNDEZ-ROSARIO, et al.,

Plaintiffs,

v.

P.R. OB-GYN GROUP, et al.,

Defendants.

Civil No. 06-1929 (ADC)

ORDER

Plaintiffs, Myraida Mélendez-Rosario (“Mélendez”), on her own and behalf of her minor son, Carlos J. Ramos-Meléndez (“Ramos-Meléndez”) (collectively, “plaintiffs”), filed this action against defendants, P.R. Ob-Gyn Group; Advanced Ob-Gyn, P.S.C.; Hospital General Menonita, Inc.; Centro Radiológico Sonográfico de Cidra; Advance Sonography & X-Ray Corp.; Dr. Floren E. Pérez; Dr. Iván Guzmán; Dr. Ramón Pérez; Dr. Juan F. Cancio; Dr. Túlio L. Ortiz; Dr. Germán López; Dr. John Doe; Dr. Richard Doe; ABC Insurance Company; and DEF Insurance Company (collectively, “defendants”), seeking damages due to defendants’ alleged negligence and medical malpractice for failure to properly diagnose multiple congenital anomalies during Meléndez’ pregnancy with Ramos-Meléndez. **Docket No. 1.** On March 26, 2007, plaintiffs requested leave to file a second amended complaint to substitute Sindicato de Aseguradoras para la Suscripción Conjunta de Responsabilidad Profesional Médico Hospitalaria (“SIMED”) for the unknown defendant, ABC Insurance Company. **Docket 45.** The court granted the requested leave. **Docket No. 51.**

Pending before the court is Magistrate-Judge Marcos E. López’ unopposed Report and Recommendation (“R & R”) (**Docket No. 119**) issued on September 30, 2008, which recommended denying SIMED’s motion for summary judgment. **Docket No. 98.**<sup>1</sup> SIMED requested summary judgment premised on the understanding that plaintiffs’ claims were time-barred. The R & R concludes that plaintiffs’ claims are not time barred as the complaint

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<sup>1</sup>Plaintiffs opposed SIMED’s motion for summary judgment. **Docket Nos. 102, 103.**

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was filed less than one year after Ramos-Meléndez' birth, therefore the applicable one year statute of limitations for medical malpractice claims had been tolled for the defendants, including SIMED. **Docket 119**. After reviewing the R & R, the court adopts the same, in full, thus denying SIMED's motion for summary judgment.

**I. Standard of Review for an unopposed Report and Recommendation**

A district court may refer pending motions to a magistrate-judge for a report and recommendation. *See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); Loc. Cv. R. 72(a).* Any party adversely affected by the recommendation issued may file written objections within ten (10) days of being served with the report and recommendation. *See 28 U.S.C. § 636(b)(1).* A party that files a timely objection is entitled to a *de novo* determination of "those portions of the report or specified proposed findings or recommendations to which specific objection is made." *Sylva v. Culebra Dive Shop*, 389 F. Supp. 2d 189, 191-92 (D.P.R. 2005) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)).

"Absent objection, ... [a] district court ha[s] a right to assume that [the affected party] agree[s] to the magistrate's recommendation." *Lopez Mulero v. Valez Colon*, 490 F. Supp. 2d 214, 217 -218 (D.P.R. 2007) (citing *Templeman v. Chris Craft Corp.*, 770 F.2d 245, 247 (1st Cir. 1985), cert. denied, 474 U.S. 1021 (1985). Moreover, in conducting its review of an unopposed R & R, the court "needs only [to] satisfy itself by ascertaining that there is no ' plain error' on the face of the record." *Lopez Mulero*, 490 F. Supp. 2d at 218.

**II. Conclusion**

After careful consideration of the unopposed R & R and the record, the Court hereby **ADOPTS** the R & R in full. **Docket No. 119**. Accordingly, SIMED's motion for summary judgment (**Docket No. 98**) is **DENIED**.

**SO ORDERED.**

At San Juan, Puerto Rico, on this 27<sup>th</sup> day of October, 2008.

**S/AIDA M. DELGADO-COLÓN**  
United States District Judge